

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITAL ONE, NATIONAL ASSOCIATION,

Plaintiff,

-against-

201 W 134 ST LLC, GERALD MIGDOL a/k/a JERRY MIGDOL, and "JOHN AND/OR JANE DOE #1" to "JOHN AND/OR JANE DOE #5" inclusive, the last five named persons being unknown to plaintiff, the persons and parties intended being the tenants, occupants, persons, entities, or corporations, if any, having or claiming upon the premises at 201 West 134th Street a/k/a 2280 Adam Clayton Powell Jr. Boulevard, New York New York, a four-story, single dwelling building, as more fully described in the complaint,

Defendants.

**AFFIDAVIT OF
DEFENDANT GERALD
MIGDOL IN SUPPORT
OF DEFENDANTS'
MOTION TO DISMISS**

12 Civ. 5025 (JMF)
ECF Case

I, Gerald Migdol, swear under penalty of perjury that:

1. I am a member of defendant 201 W 134 ST LLC (the "LLC"), which is a New York limited liability company.
2. The LLC owns the property located at 201 West 134th Street New York, NY (the "Property"), which is a one family dwelling with a commercial space on the ground floor.
3. I, as member of the LLC, purchased and renovated the Property with the intention that the Property would be my principal dwelling place; I obtained financing either as the borrower or co-borrower (as guarantor) at various stages of ownership and renovation with debts that were incurred primarily for household purposes.

4. Since the time that I purchased the Property, I either used the Property as my principal dwelling or rented it out for short periods of time with the intention that it will later be used by me and my family as my principal dwelling.

5. I found a copy of the summons and complaint for the above captioned action on the sidewalk outside of my office at 223 West 138th Street, New York, NY (the "Migdol Office") and also received a copy of the summons and complaint by mail at the Migdol Office; I was not served in accordance with the Federal Rules of Civil Procedure or the New York Civil Practice Law and Rules.

6. I have read each of the two affidavits of service sworn by Nicholas Kelly regarding the service upon myself and the LLC, and I respond with the following:

- a. There is not a person that lives or works at the Migdol Office that meets the description of "John Doe" nor does the description of "John Doe" describe me;
- b. There is no receptionist desk at the Migdol Office;
- c. Because of the foregoing in paragraphs 5 and 6 of this affidavit, I believe that the affidavit of Nicholas Kelly is false.

7. I have read the Amended Affidavit of Service of Nicholas Kelly, and I respond with the following:

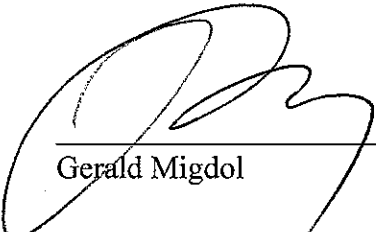
- a. There is not a person that lives or works at the Migdol Office that meets the description of "John Doe" nor does the description of "John Doe" describe me;
- b. The affiant's original affidavit of service claims that there was a receptionist desk in my office, but my affidavit in response explained that there is no receptionist desk in my office; the affiant then made an Amended Affidavit of Service, which claims that the summons

and complaint were left at a nearby desk (not a receptionist desk), but this raises doubts as to whether this actually happened given the affiant's initial blatantly false statement and subsequent revision in an attempt to fit the affidavit of service to the reality described by my prior affidavit.

8. Two copies of the summons and Amended Complaint were left outside of the external entrance door to my office building on the ground; I have pictures of this if the Court would like to see. I was not served with the Amended Complaint personally, by mail or by any other means, and nobody in my home or office was served personally or by mail.


9. I object to the alleged mortgage and notes and the amounts that are alleged to be due.

I declare under penalty of perjury that the foregoing is true and correct.


Gerald Migdol

Dated: September 14th, 2012

Subscribed and sworn to me this
14 day of September, 2012


Notary Public

RONALD W. CLARKE
Notary Public, State of New York
No. 24-4777791
Qualified in Kings County
Commission Expires December 31, 2014